THE HONOURABLE SRI JUSTICE GODA RAGHURAM

Writ petition NO. 7727 OF 1997

Between :

Gaddam John Vesly, Guntur
And others

… Petitioners

And:

Commissioner and Director of
Higher Education, Hyderabad
And others

… Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 7727 OF 1997

ORAL ORDER :

The five petitioners are employees of the 3rd respondent College, an institution administered by the 4th respondent Society, affiliated to the 2nd respondent University and regulated by the 1st respondent Authority. In brief, the petitioners seek salaries as per the UGC Revised Scales of Pay, with effect from. 1.1.1986. They also are aggrieved that the respondents Nos 1 and 2 have failed to take action against the 3rd respondent college or the 4th respondent society for failing to pay them the relevant pay scales.

The petitioners are all Lecturers in various disciplines in the 2nd respondent college. The 5th respondent is a Senior

Lecturer. The first petitioner was appointed on 1.2.1992; the 2nd petitioner on 1.8.1990; the 3rd petitioner on 9.9.1986; the 4th petitioner on 7.2.1983 and the 5th petitioner on 23.8.1975, as lecturers. Up to 1.1.1986 they were paid salaries according to the applicable pay scales. There is no complaint on this aspect. Since 2006 the 3rd respondent has extended to the petitioners the 1996 pay scales and there is no complaint thereafter, either. The grievance in the writ petition relates to the period from 1.1.1986 till the date of filing the writ petition. The petitioners complain that the benefits of the UGC revised scales of pay, extended by the State Government in G.O.Ms.No. 520 Education Department dated 15.12.1988 have not been granted to them by the 3rd respondent and that the respondent Nos. 1 and 2 abdicated their statutory obligations as the regulation authority and the affiliating university, to ensure that the 3rd respondent pays teachers the pay scales due and payable under law. The petitioners rely on the provisions of the Andhra Pradesh Education Act, 1982 ('the Act'); the Andhra Pradesh Educational Institutions (Establishment, Recognition, Admission and Control of Institutions of Higher Education) Rules 1987 ('the Rules'); G.O.Ms.No. 1072 Education Department, dated 26.11.1976; G.O.Ms.No. 520 Education Department dated 15.12.1988, G.O.Ms.No. 140 Higher Education Department dated 3.10.2005 and G.O.Ms.No. 208 Higher Education Department dated 29.6.1999 to buttress their claim and justify the reliefs sought in the writ petition.

On behalf of the respondent Nos 1 and 2, the learned Government Pleader for Higher Education and Sri Harinatha Gupta, learned Standing Counsel, respectively, urged that the 3rd respondent being a private unaided educational institution is

neither, expressly nor by a compelling implication of law, obligated to extend the petitioners the UGC revised scales of pay 1986 on the basis of G.O.Ms.No. G.O.Ms.No. 520 Education Department dated 15.12.1988. It is alternatively contended on behalf of these respondents, a contention echoed on behalf of the 3rd and 4th respondents, that none of the petitioners are qualified and eligible for the 1986 ed scales of pay in view of the conditionalities imposed in G.O.Ms.No. G.O.Ms.No. 520 Education Department dated 15.12.1988,which require possession of Post Graduate qualification with 55% of marks and passing of the onal Eligibility Test/State Level Eligibility Test (NET/SLET) as the eligibility for entitlement to the UGC revised scales of pay 1986. As such there is no question of abdication of statutory responsibility by the respondent Nos 1 and 2.

On behalf of the 4th respondent Society it is additionally contended that the 3rd respondent Law School was established in 1974 as a self-financing no profit, no loss educational institution with the specific object of imparting legal education to the civil society; its establishment expenditure is met from the fees received from the students; and it has no financial ability to bear the additional outlay on account of the UGC revised scales of pay introduced with effect from. 1.1.1986. This contention is advanced as an alternative to the principal contention that there is no legal liability to pay the 1986 revised UGC scales of pay.

Before proceeding to analyze the several and rival contentions, it must be noticed that apart from the provisions of the Act and the Rules, substantive reliance is on Government Orders. These are not statutory instruments, which are asserted to have been published in the official gazette. These are periodical exercises of executive policy and are essentially non-

statutory in character. In cases pertaining to the Education Department, it is the common experience of this court that all the G.Os relevant to a particular case are not brought to the notice of the court. This court therefore records that the analysis in this case is on the basis of and confined to a consideration of those G.Os, which are on record. No other G.O. except as has been considered in the judgment, has been brought to the notice of this court.

From a survey of several G.Os which will be referred to in the course of this judgment, it would appear that the issue of implementation of the UGC revised scales of pay to Government colleges, universities, private aided educational institutions and private un-aided educational institutions, has had a checkered, meandering and incoherent trajectory. On 31.3.1961 the State Government in G.O.Ms. No. 939, after cogitating for sometime whether to implement the scales of pay recommended by the UGC to the colleges affiliated to universities in the State, issued an order extending the scales of pay recommended by the UGC to Government and non-Government affiliated colleges with effect from. 1.3.1961. In para-3 of this order, while directing extension of the UGC scales of pay, the State Government ordered that the managements of aided colleges will claim the State's share towards the teaching grant due to them. In Para-2 the State Government committed itself to bear 25% of the incurred cost on the managements of private educational institutions bearing the other 25% and the UGC funding the remaining 50%. Building upon the ambiguous order as per Para-3 of the G.O., the learned counsel for the 3rd respondent would contend that this order does not expressly extend the UGC revised scales of pay to unaided educational institutions. This contention is stated to be rejected. The

phraseology though ambiguous in Para-3 of the order, read holistically and in the context of the entire G.O. clearly signals that the scales of pay recommended by the UGC is applied to both Government and non-Government affiliated colleges with effect from. 1.3.1961. The second sentence in para-3 with regard to the management of aided educational institutions being entitled to claim the State's share of contribution, it is only an amplification of the State's promise to fund part of the expenditure (set out in para-2 of this order). The State Government in this order has classified colleges into Government and non-Government affiliated colleges. The 3rd respondent does not claim to be a Government college. It is clearly an affiliated non-Government college. The 3rd respondent is thus covered by the principal directive of the State viz., extension of the UGC revised scales of pay to its employees.

In G.O.Ms. No. 1182 Education Department, dated 26.5.1967 pursuant to further recommendations of the UGC and their adoption by the Government of India with effect from. 1.4.1966, the State Government following suit and after consultation with the Federal Government agreed to extend these scales of pay to college teachers and decided to give effect to the UGC revised scales of pay to teachers of Government and aided colleges with effect from. 1.4.1966. Para-2 of this order no doubt clearly states that the revised scales as per G.O.Ms. No. 1182 is applicable to the Government teachers and of aided colleges. The question is whether unaided educational institutions are covered notwithstanding the specification in G.O.Ms.No. 1182. That is an aspect that will be considered while dealing with the scope and ambit of the Rules.

In G.O.Ms. No. 1072, another pay revision pursuant to the recommendations of a three-man Committee was agreed upon by the State. This was made applicable to affiliated Degree and PG Colleges. As the petitioners were granted revised pay scales in accordance with G.O.Ms. No. 1182, an extensive analysis of the provisions of this G.O. is not warranted. Suffice it to record that in a subsequent order in G.O.Ms. No. 719, dated 3.7.1978 it was directed that *apropos* the UGC's suggestions, the State Government reconsidered the conditions imposed for eligibility of revised pay scales of 1976 and have issued an amendment to G.O.Ms No. 1072. Accordingly, the higher academic qualification prescribed by the UGC and specified in Annexure-II of G.O. Ms. No. 1072 were directed to be scrupulously followed for all fresh recruitment of college teachers.

In G.O.Ms.No. 520 there was a further revision of the UGC scales of pay. The Union Government having indicated its willingness to financially assist the State Government if the State Government desires to adopt the revised scales of pay in respect of teachers of universities and colleges in the State, the State Government extended the UGC revised scales of pay *inter alia* to teachers, librarians and Physical Education personnel in the universities and colleges in the State. The revised scales of pay were enforced with effect from 1.1.1986. Para-4 of this G.O. enjoins that the revision of pay scales is applicable to all teachers of universities and affiliated Degree and PG Colleges, Government or private aided and to Physical Education personnel and Librarians in the universities, who are drawing pay in the revised pay scales 1976, analogous to the UGC revised scales of pay, 1986. In para-4 of the G.O. it is clearly specified that the revised scales of pay are applicable subject to

fulfillment of the criteria laid down in the conditions of service appended to the G.O., regarding recruitment qualifications etc. The appendix to G.O.Ms.No. 520 specifies *inter alia* the conditions of service, recruitment and qualifications. Paras 2 and 3 of this appendix specify that the minimum qualifications for appointment to the post of Lecturer will be as prescribed by the UGC from time to time and are currently a Masters Degree in the relevant subject with at least 55% of marks or an equivalent grade with good academic record, for entitlement to the pay scale of Rs.2200-4000 for the post of a Lecturer. The further stipulation is that only those candidates who, apart from fulfilling academic qualification prescribed in para-2, have qualified in the comprehensive test (NET), would be entitled to the revised scales of pay.

By G.O.Ms No. 208, Higher Education Department, dated 29.6.1999, there was a further revision of the UGC revised scales of pay with effect from 1.1.1996 and all teachers of university and affiliated Degree and PG colleges, whether Government or private aided and drawing pay under the 1986 UGC revised scales of pay, were entitled to the benefit of this revision. As already stated, the petitioners were granted the benefit of this revision but with effect from 2006. In any event the grievance or claim in the writ petition does not pertain to deprivation of the 1996 scales of pay.

In G.O.Ms. No. 140, Higher Education, dated 3.10.2005 the State Government issued orders to extend the benefit of the UGC revised scales of pay 1996 even to those employees working in private aided colleges who are not qualified for this benefit, by exempting the requirement of passing the NET/SLET. In fact in an earlier order in G.O.Ms. No. 61 dated 16.7.2001 the State Government issued an order exempting

Lecturers in Government Junior Colleges from the requirement of passing of NET/SLET qualification as a condition precedent to eligibility to the 1986 revised scales of pay. G.O.Ms. No. 61 had confined the consequent monetary benefit prospectively from the date of that order. G.O.Ms. No. 140 similarly ordains that the monetary benefits consequent on this G.O. and the exemption engrafted thereunder would be prospective from the date of issue of this order (G.O.Ms.No. 140).

The Act is a piece of consolidating legislation with a view to amend and consolidate the existing laws relating to the education system in the State. Sec.20 makes it mandatory that permission be obtained for establishment of educational institutions in the State. That the 4th respondent is an educational institution governed by the provisions of the Act, is not in contest. Sec.21 empowers the competent authority to grant or withdraw recognition to institutions imparting education, on the occurrence of any of the eventualities enumerated in sub-sec (2) of Sec.21. This is apart from the over-arching power of the Government to withdraw recognition u/Sec. 21(3). Sec. 84 of the Act ordains that the pay and allowances of the employees of private institutions must be paid in the prescribed manner and that the Government would have the power to direct payment of salaries of teachers and members of the non-teaching staff in any private aided institution or class of private aided institutions in such manner and through such agency as may be specified. Sec.84A enjoins the penalties that may be imposed for contravention of the provisions of Chapter-XIV of the Act. Sec.99 sets out the rule making power. That the State Government has the power to frame rules for regulating the conduct of private educational institutions, aided or unaided, is not in serious contest.

Exercising the available rule making power, the State Government has framed the Rules. Rule-7(1) enjoins that the staff pattern of the several class or categories of educational institutions shall be prescribed *inter alia* by the Director of Higher Education. Sub-rule (4) of Rule 7 enjoins:

> *" 7(4) Payment of Salaries to Staff :- The Educational Agency of any private institution shall pay salaries to its staff as per the Government scales of pay and by following such procedure as may be prescribed by Government from time to time, in this regard."*

Rules 9 and 10 are in the nature of house keeping provisions, which enable withdrawal of recognition or affiliation for transgression of the provisions of the Rules.

For the purpose of this case, suffice it to notice that every educational agency or private educational institution is enjoined [Rule 7(4)] to pay salaries to its staff as per the Government scales of pay. Though the language of the rule is ambiguous, it may be textually refined to be understood that private educational institutions are required to pay their staff pay scales on par with the pay scales payable to the teachers and non-teaching staff in Government educational institutions. This is an obligation enjoined on private educational institutions. The Rules do not mark a distinction between aided and unaided private educational institutions in the matter of the obligation enjoined by Rule-7(4). The only distinction between these two classes of institutions is that in the case of aided institutions a part or whole of the establishment charges would be met by the Government by way of grant-in-aid whereas in the case of unaided educational institutions the institutions will have to survive on their own in the market place. The respondent Nos 3 and 4 have not challenged the validity of the Rules. Even otherwise, *prima facie*, these Rules and in particular Rule 7(4),

is intended to regulate the pay structure of private educational institutions so as to ensure the quality of education. It is therefore perhaps a rational and constitutional exercise of power by the State having regard to its regulatory functions enabled by the provisions of the Act.

It has been contended on behalf of the 3rd respondent, that as G.O.Ms.No. 520 does not expressly enjoin payment of the revised 1986 UGC scales of pay, to unaided educational institutions and as none of the other Government orders since 1961 specifically extend the obligation to pay the UGC revised scales of pay to the staff of private unaided educational institutions, there is no such obligation. This contention proceeds on a misconception and ignorance of the clear injunctions of Rule 7(4). Rule 7(4) is a statutory expression and executive Governments are, under our constitutional scheme, obligated to have fidelity to legislative and statutory instruments. The executive power of the State cannot prevail over the provisions of the Act or those of the Rules. Neither the silence in the several Government orders or even explicit or clear executive statements that the benefits of the UGC revised scales of pay would be confined only to the Government teachers and teachers of private aided educational institutions cannot dissolve the statutory trajectory of Rule 7(4). If as a result of any Government order the teachers in Government schools or colleges are entitled to a particular scale of pay - the UGC revised scales of pay or otherwise, those would constitute Government scales of pay. Automatically the mandate of Rule-7(4) springs into operation and an educational institution including a private unaided educational institution, would be obligated to extend to its staff the pay scales applicable to the Government employees (teachers). The contention to the

contrary built up on the silence and ambiguity in successive Government orders is, on the above analysis, misconceived. This contention does not therefore commend acceptance of this court.

As the petitioners entitled to the UGC revised scales of pay 1986 as made applicable to the Government teachers by the orders in G.O.Ms.No. G.O.Ms.No. 520 Education Department dated 15.12.1988, is the question.

Earlier in this judgment, this court has concluded that private educational institutions whether aided or otherwise, are obligated to pay their staff Government pay scales in view of the mandate of Rule 7(4) of the Rules. Are all Government teachers entitled to the 1986 revised UGC pay scales, is the question. There has been some debate at the Bar and forcefully by Sri M.R.K.Chowdary, the learned Senior Counsel for the petitioners that the 1986 revised scales of pay *qua* G.O.Ms.No. 520 Education Department dated 15.12.1988 were in fact extended to all Government teachers irrespective of whether they obtained 55% marks in Post Graduation and whether they had the NET/SLET qualification. It is not the province of this court to implement Governmental practices. There may be irrational or illegal executive practices whose replication may not be directed by Mandamus. This court will implement the law and G.O.Ms.No. 520 Education Department dated 15.12.1988 constitutes, in the absence of any contra legislation or statutory instrument, the legal framework for grant of the 1986 UGC revised scales of pay. This G.O. in clear and unambiguous terms enjoins that the entitlement to the revised scales of pay is subject to fulfillment of the criteria laid down in the conditions of service appended to the G.O., regarding recruitment, qualifications etc. The appendix clearly enjoins, as already

noticed, a Master's Degree in the relevant subject with at least 55% marks or its equivalent grade and good academic record and having a comprehensive test certificate (NET/SLET), as the qualification for recruitment. None of the petitioners except the first petitioner have even today, the NET/SLET qualification. The 4th petitioner has not obtained 55% marks in the PG in the relevant subject. The first petitioner acquired the NET qualification only in January 1991. These are undisputed facts. There is neither a contest in the pleadings or in oral argument on these aspects. Petitioners 2 to 5 are therefore disentitled to the benefits of the 1986 UGC revised scales of pay as per G.O.Ms.No. G.O.Ms.No. 520 Education Department dated 15.12.1988, since these petitioners do not possess the NET/SLET qualification, which is the *sine qua non* for eligibility to the 1986 revised UGC scales of pay. In so far as the first petitioner is concerned, since he is otherwise qualified, since he has the NET qualification and had obtained 55% marks in the relevant Post Graduation, there appears no justification for the 3rd respondent denying the first petitioner, the benefit of the 1996 UGC revised scales of pay, with effect from the date he acquired the NET, in January 1991.

None of the respondents 1 to 4 has addressed in the pleadings, the issue of the entitlement of the first petitioner to the 1996 UGC revised scales of pay.

The liability of respondent Nos 3 and 4 to pay salary to the employees of the 3rd respondent on par with Government scales of pay is a liability that arises as a consequence of the mandate of Rule 7(4) of the Rules. This mandate cannot be avoided by ambiguous executive orders including G.O.Ms.No. 520. G.O.Ms. No. 520 extends the 1986 UGC revi144sed scales of pay to teachers working in Government educational institutions

and private aided educational institutions as well. Since Lecturers working in Government Law Colleges are entitled to the revised UGC scales of pay 1986 (if they have 55% marks in the relevant PG qualification and have passed NET/SLET), since the first petitioner has both these qualifications indisputably, the first petitioner is entitled to the 1986 revised UGC scales of pay, with effect from January 1991, on acquiring the NET qualification.

The 1st respondent is the competent State agency obligated to ensure the implementation of the provisions of the Act, the Rules and the several Government Orders, by private educational institutions. The 1st respondent has failed to diligently perform this statutory function. The 2nd respondent as the affiliating University has been similarly remiss. This respondent is required to ensure that colleges affiliated to it pay their staff pay scales in accordance with law. Payment of salaries to the teaching and non-teaching staff is a critical component that ensures the standards of education. Standards of education is the concern of an affiliating University. It is an academic obligation. Universities which become oblivious to such academic discipline, rigor and concern for academic standards will decline sooner than later. The 2nd respondent has been remiss in this critical obligation in failing to follow up with due care and concern whether the 3rd respondent institution had paid the first petitioner salary as he was entitled to in accordance with G.O.Ms.No. 520 Education Department dated 15.12.1988.

On the aforesaid analysis the writ petition is partly allowed. Respondents Nos. 3 and 4 shall, within sixty (60) days from the date of receipt of a copy of this order, pay to the first

petitioner the arrears of difference in salary, consequent on his entitlement to the UGC revised scales of pay 1986 as provided in G.O.Ms.No. 520 Education Department dated 15.12.1988 with effect from January 1991, when first petitioner obtained the qualification of NET and became eligible for the benefits of the UGC revised scales of pay 1986. The claims of the other petitioners to the benefits of the 1986 UGC revised scales of pay under G.O.Ms.No. 520 Education Department dated 15.12.1988, are rejected since they do not possess qualification mandated in para-4 of the Government Order.

The writ petition is partly allowed as above. No order as to costs.

Dated: 04.04.2007 ----------
Pvsn/Tsnr Justice G.Raghuram